

- (1) Whether the Administrative Law Judge exceeded her authority and jurisdiction in finding that personal injury by accident arising out of and in the course of the claimant's employment occurred in this claim.
- (2) Whether the Administrative Law Judge exceeded her authority and jurisdiction in finding that the relationship of employer and employee existed at the time of the alleged work-related accident herein.
- (3) Whether the Administrative Law Judge exceeded her authority and jurisdiction in finding that timely notice of this accident was made by claimant to the respondent as required by K.S.A. 44-520.
- (4) Whether the Administrative Law Judge exceeded her authority and jurisdiction in ordering outstanding unauthorized medical bills incurred in this claim to be paid as authorized medical, when such charges should be reimbursable pursuant to K.S.A. 44-510(c)(2), as unauthorized medical.
- (5) Whether the Administrative Law Judge exceeded her authority and jurisdiction in ordering a treating physician who has not been authorized by the respondent and insurance carrier pursuant to K.S.A. 44-510. It is the contention of the respondent that in the event of an allegation that medical treatment provided by respondent and insurance carrier is not sufficient, respondent is only obligated to provide the names of three medical providers that would be authorized by respondent as provided by K.S.A. 44-510(c)(1).

In her brief, claimant also seeks review of the Administrative Law Judge's denial of temporary total disability compensation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and considering the briefs of the parties, the Appeals Board finds, for preliminary hearing purposes, as follows:

The findings by the Administrative Law Judge that claimant's injury is compensable as an injury arising out of and in the course of her employment and that the employer had actual knowledge of the injury pursuant to K.S.A. 44-520 are supported by the greater weight of the credible evidence and should be affirmed. The Appeals Board approves and adopts the findings and conclusions of the Administrative Law Judge.

The claimant sustained injury to her thoracic spine during a post-offer, pre-employment physical examination. The Appeals Board finds this injury to have arisen out of and in the course of claimant's employment pursuant to K.S.A. 44-501(a). Respondent argues that the relationship of employer and employee did not exist on September 9, 1994 at the time of claimant's injury. Respondent's offer of employment was conditioned upon claimant's successfully completing a pre-employment physical which included drug testing. Claimant was injured during the pre-employment physical examination. Hence, according to respondent, claimant was not an employee and her accident did not arise out of and in the course of her employment.

The Kansas Workers Compensation Act is to be liberally construed for the purpose of bringing employers and employees within the provisions of the Act so to provide the protection of the Act to both. K.S.A. 44-501(g). It is clear that the respondent was exercising its right to direction and control over claimant's physical conduct during and as a part of the physical examination. The injury was sustained on the respondent's premises while claimant was performing a function she was directed to do in preparation for assuming her work duties. The Appeals Board finds under the circumstances of this case that it is appropriate to treat the pre-employment physical examination as a part of the employment.

It is alleged that the claimant failed to give notice of her accidental injury to her supervisor within ten (10) days of the accident date, and that the evidence does not establish just cause for her failure to comply with the ten (10) day notice requirement of K.S.A. 44-520. The evidence is clear that claimant immediately reported her injury to the technicians who were administering the strength test which claimant was performing at the time of her injury. Furthermore, she subsequently described the injury to the examining physician. Both the technicians and the physician were employees of respondent. We agree with the finding by the Administrative Law Judge that respondent thereby had actual knowledge of the accident and thereby satisfied the requirements of K.S.A. 44-520.

The remaining issues raised by the parties do not give rise to jurisdictional issues from which the Appeals Board may review a preliminary order. Therefore, the orders concerning payment of outstanding medical as authorized medical, authorization of Dr. Whitmer as treating physician and denying temporary total disability compensation unless claimant is taken off work, all remain in full force and effect.

WHEREFORE, the Appeals Board finds that the Preliminary Hearing Order of Administrative Law Judge Shannon S. Krysl dated April 4, 1995 should be, and the same is, hereby affirmed

IT IS SO ORDERED.

Dated this ____ day of July, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Boyd Byers, Wichita, KS
Jeffrey S. Austin, Overland Park, KS
Shannon S. Krysl, Administrative Law Judge
David Shufelt, Acting Director